Software Rights Archive, LLC v. Google Inc. et al

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EXHIBIT 18

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOMTAI TROY CHAROENSAK and MARIANA ROSEN, etc., et al.,	
Plaintiffs,	Case Number:
vs.	C 05 00037 JW
APPLE COMPUTER, INC.,	
Defendant.	

DEPOSITION OF JOHN PISARKIEWICZ, Ph.D.

February 28, 2007

238775

BARKLEY Court Reporters

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(858) 455.5444 San Diego
(760) 322.2240 Palm Springs

APPEARANCES

ON BEHALF OF PLAINTIFFS:

ROY A. KATRIEL, ESQUIRE
The Katriel Law Firm
1101 30th Street, N.W.
Suite 500
Washington, D.C. 20007
(202)625-4342

ON BEHALF OF DEFENDANT:

ROBERT A. MITTELSTAEDT, ESQUIRE
Jones Day
555 California Street
26th Floor
San Francisco, California 94104
(415)626-3939

ALSO PRESENT:

BRYAN MACKEY, Videographer

LORENZO COPPI

P R O C E E D I N G S

09:40:59 THE VIDEOGRAPHER: Here begins Tape
09:41:00 No. 1 in the deposition of John Pisarkiewicz,
09:41:04 Ph.D., in the matter of Somtai Troy Charoensak, et
09:41:09 al v. Apple Computer, Inc., in the United States
09:41:15 District Court for the Northern District of
09:41:15 California, Case No. C 05 00037 JW.
09:41:23 Today's date is February 28th, 2007.
09:41:29 The time is 9:41 a.m.
09:41:34 The video operator today is Brian
09:41:34 Mackey.
09:41:36 This deposition is taking place at the
09:41:38 offices of Jones Day, 51 Louisiana Avenue,
09:41:40 Northwest, Washington, D.C.
09:41:44 Would counsel please identify
09:41:45 themselves and state whom they represent.
09:41:49 MR. KATRIEL: Good morning. Roy
09:41:49 Katriel on behalf of the plaintiffs.
09:41:50 MR. MITTELSTAEDT: Bob Mittelstaedt for
09:41:50 the defendants, and with me is Lorenzo Coppi.
09:41:56 THE VIDEOGRAPHER: The court reporter
09:41:56 today is John Harmonson.
09:41:59 Would the reporter please swear in the
09:41:59 witness.

JOHN PISARKIEWICZ, Ph.D.,

after having been first duly sworn, was examined and did testify under oath as follows:

EXAMINATION

09:42:10 BY MR. MITTELSTAEDT:

09:42:12 Q. If you would state your full name and
09:42:14 business address, please.

09:42:16 A. John Pisarkiewicz. The address is
09:42:19 Nathan Associates at 2101 Wilson Boulevard, Suite
09:42:24 1200, Arlington, Virginia, 22201.

09:42:29 Q. What did you do to prepare for the
09:42:31 deposition?

09:42:33 A. I met with Roy yesterday afternoon, and
09:42:39 I reviewed my affidavit, and I obtained from Roy a
09:42:52 copy of the deposition transcript of Mary Ann
09:42:56 Rosen.

09:42:56 Q. Did you read it?

09:42:57 A. I got about halfway through last night.

09:43:01 Q. Did you draw any conclusions from it?

09:43:12 A. With respect to my affidavit, no.

09:43:18 Q. How long did you spend with Mr. Katriel
09:43:21 yesterday?

09:43:24 A. Probably about an hour and 15 minutes.

09:43:26 Q. Did he point out any potential problems
09:43:29 in your report?

11:20:47 put on the iPod as well.
11:20:48 Q. My question is, have you actually asked anybody what music or what source of music they have on their iPods or other MP3 players?
11:20:58 A. I have not.
11:20:58 Q. Do you know anybody who has an MP3 player other than an iPod?
(Telephone interruption.)
11:21:18 BY MR. MITTELSTAEDT:
11:21:22 Q. Anybody who has an MP3 player other than an iPod?
(Telephone interruption.)
11:21:41 THE WITNESS: I don't.
11:21:42 BY MR. MITTELSTAEDT:
11:21:44 Q. Do you have an iPod?
11:21:45 A. I do.
11:21:46 Q. How long have you had it?
11:21:49 A. A year, a little over a year.
11:21:52 Q. Why did you buy it?
11:21:54 A. To impress my nephews and show them that their Uncle John was still with it and knew about these things.
11:22:03 Q. Why didn't you buy a competitor?
11:22:05 A. I have Apple computers. There's an Apple store near where I work. I can walk to it

REPORTER'S CERTIFICATE

I, the undersigned Registered Professional Reporter and Notary Public, do hereby certify that JOHN PISARKIEWICZ, Ph.D., after having been first duly sworn by me to testify to the truth, did testify as set forth in the foregoing pages, that the testimony was reported by me in stenotype and transcribed under my personal direction and supervision, and is a true and correct transcript.

I further certify that I am not of counsel, not related to counsel or the parties hereto, and not in any way interested in the outcome of this matter.

SUBSCRIBED AND SWORN TO under my hand and seal this 5th day of March, 2007.

John L. Harmonson

JOHN L. HARMONSON, RPR
Notary Public in and for
the District of Columbia
My Commission Expires: 10/14/2010

EXHIBIT 19

08:59:01

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

---o0o---

MELANIE TUCKER, On Behalf of Herself and All Others Similarly Situated,	)	
Plaintiff,	)	Case No. C 06 4457 HRL
vs.	)	
APPLE COMPUTER, INC., a California Corporation,	)	
Defendant.	)	

---o0o---

FRIDAY, OCTOBER 26, 2007

VIDEOTAPE DEPOSITION OF MELANIE TUCKER

---o0o---

REPORTED BY: BALINDA DUNLAP, CSR 10710, RPR, CRR, RMR

A P P E A R A N C E S

---o0o---

FOR THE PLAINTIFF:

BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C.
2901 North Central Avenue, Suite 1000
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New York, New York 10016
BY: BRIDGETT HAMILL, ESQ.

FOR THE DEFENDANT:

JONES DAY
555 California Street, 26th Floor
San Francisco, California 94104
BY: BOB MITTELSTAEDT, ESQ.
LARA KOLLIOS, ESQ.

SAN FRANCISCO, CALIFORNIA, OCTOBER 26, 2007

---o0o---

BE IT REMEMBERED that on Friday, the 26th day of October, 2007, commencing at the hour of 9:11 a.m. thereof, at 555 California Street, 26th Floor, San Francisco, California, before me, Balinda Dunlap, a Certified Shorthand Reporter in and for the County of San Francisco, State of California, personally appeared:

09:10:34 THE VIDEOGRAPHER: Good morning. My name is Michael Barber. I am a videographer associated with Barkley Court Reporters, located at 222 Front Street, Suite 600, San Francisco, California 94111. The date is October 26th, 2007. The time is 9:11 a.m.

09:11:08 This deposition is taking place at Jones Day, 555 California Street, San Francisco, California 94104 in the matter of the Apple iPod iTunes antitrust litigation appearing in the U.S. District Court for the Northern District of California, San Jose Division, Case Numbers C050037 JW and C0604457 JW.

09:11:39 This is the videotape deposition of Melanie Tucker being taken on behalf of the defense.

09:11:45 Counsel, would you please identify yourselves for the record and state whom you represent.

09:11:49 MR. MITTELSTAEDT: I'm Bob Mittelstaedt for the defendant.

09:11:52 MS. KOLLIOS: Lara Kollios for the defendant.
09:11:54 MS. HAMILL: Bridget Hamill, Murray, Frank & Sailer for plaintiff Mary Ann Arusen.
09:12:01 MR. WESTON: Greg Weston from Coughlin Stoia representing the class.
09:12:06 MS. SWEENEY: Bonny Sweeney.
09:12:09 MR. CARPENTER: Todd Carpenter from Bonnett, Fairbourn, Friedman & Balint representing the plaintiffs.
09:12:14 THE VIDEOGRAPHER: Thank you. Would the court reporter please swear in the witness.
09:12:24 MELANIE TUCKER
called as a witness by the Defense, having been sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:
09:12:26 ---o0o---
09:12:26 EXAMINATION BY MR. MITTELSTAEDT
09:12:27 Q. If you would state your full name and address for the record, please.
09:12:29 A. Melanie Christine Tucker, 4431 Cleveland Avenue, No. 2, San Diego, California 92116.
09:12:40 Q. Have you ever had your deposition taken before?
09:12:43 A. No, I have not.
09:12:44 Q. What have you done to prepare for the deposition?
09:12:48 A. I met with my counsel briefly.
09:12:50 Q. For how long?

A. I believe it was in April 2004.
Q. Are you sure about the year?
A. Fairly sure about the year.
Q. Okay. Why did you buy that iPod?
A. Because I wanted to be able to consolidate my music and carry it with me.
Q. And what music did you have at that point?
A. I had a couple hundred CDs.
Q. And what else?
A. That was it.
Q. Just so we get off on the right footing here, your complaint says that on or about April 2005 you purchased a 20 gig iPod. Does that refresh your recollection that your iPod -- your first iPod was April of 2005?
A. Yes.
Q. Where did you buy that iPod?
A. I bought it on line through the Apple store.
Q. How much did you pay for it?
A. I don't recall.
Q. Approximately?
A. Approximately 250 to 300.
Q. And how did you choose an iPod?
MR. CARPENTER: Objection. Vague and ambiguous.
Go ahead.
THE WITNESS: I had friends that had iPods and had

seen advertisements.

Q. BY MR. MITTELSTAEDT: Do you remember the names of any of the friends in particular?

A. Yes.

Q. Who?

A. Travis Duke, Sean Thompson.

Q. And do you recall anything either of them told you about their iPods?

A. Just that they liked them.

Q. Did they say what they liked about them?

A. That all their music was in one place and easy to access.

Q. Anything else?

A. That's it.

Q. Did you shop around for other brands, other types of digital music players?

A. I briefly looked at one other.

Q. What was the other one that you looked at?

A. I believe it was called an iRiver.

Q. iRiver?

A. I believe so. Not sure.

Q. Where did you look at an iRiver, or whatever it was called?

A. I was browsing online.

Q. Do you remember what website?

09:17:31 A. I thought there were others, but I didn't look into
09:17:34 them.
09:17:35 Q. And why didn't you look into them?
09:17:36 A. Because I had friends that had the iPod and were
09:17:41 satisfied.
09:17:42 Q. Okay. At that time did you think the price that you
09:17:44 paid for the iPod was a fair price?
09:17:47 MR. CARPENTER: Objection. Vague and ambiguous as to
09:17:49 "fair."
09:17:50 THE WITNESS: I thought it was highly priced.
09:17:53 Q. BY MR. MITTELSTAEDT: More than you wanted to pay?
09:17:55 A. More than I wanted to pay.
09:17:57 Q. But why did you buy it anyway?
09:17:59 A. More than I could afford. Because I wanted it. I
09:18:09 had decided I wanted it.
09:18:10 Q. Did I hear you right to say that it was more than you
09:18:13 could afford?
09:18:14 A. Yes.
09:18:15 Q. Where did you get the money?
09:18:17 A. I had to save extra for it.
09:18:21 Q. But at the end of the day, you thought it was
09:18:24 worthwhile paying the price that you paid?
09:18:26 MR. CARPENTER: Objection. That misstates her
09:18:28 testimony.
09:18:31 THE WITNESS: Can you reask the question?

10:10:24 A. I have been there. I don't know when.
10:10:27 Q. Why did you go there?
10:10:32 A. I was looking at an iPod. I don't remember if that's
10:10:40 the store I took my broken iPod to or not.
10:10:42 Q. And why did you look at iPods when you went to the
10:10:45 Fashion Valley store?
10:10:52 A. Most likely to replace the other one, the broken one.
10:10:56 Q. When did your first iPod break?
10:10:58 A. I don't remember when it broke.
10:11:00 Q. Was it 2006?
10:11:06 A. Yes.
10:11:07 Q. Was it first half or second half of that year?
10:11:10 A. I don't remember.
10:11:13 Q. Do you remember, was it the summer?
10:11:15 A. I don't remember.
10:11:17 Q. How long was it before you replaced it?
10:11:23 A. I really don't remember.
10:11:25 Q. Do you remember whether it was a matter of weeks or a
10:11:29 matter of months?
10:11:31 A. It may have been a month or two maybe.
10:11:36 Q. Is that a guess or do you have a recollection of
10:11:39 that?
10:11:39 A. That's a guess.
10:11:42 Q. How did it break?
10:11:45 A. I dropped it, and the screen went blank and stopped

10:11:56 working.
10:11:57 Q. What did you do when that happened?
10:11:58 A. I was upset.
10:11:59 Q. And after you were upset, what did you do?
10:12:03 MR. CARPENTER: Objection to form. Vague and
10:12:15 ambiguous.
10:12:15 THE WITNESS: I think that's when I took it to an
10:12:17 Apple store.
10:12:23 Q. BY MR. MITTELSTAEDT: How long after you dropped it
10:12:25 did you go to the Apple store?
10:12:32 A. A few days to a week maybe.
10:12:35 Q. And when you got to the Apple store, you think it was
10:12:39 the Fashion Valley one; is that correct?
10:12:41 A. I don't remember which store it was.
10:12:43 Q. Well, if it wasn't the Fashion Valley one, what one
10:12:46 was it?
10:12:46 A. It would have been the one at the UTC Mall in La
10:12:50 Jolla.
10:12:50 Q. And that's where you bought the second iPod?
10:12:53 A. Correct.
10:12:54 Q. So whichever store you went to a few days to a week
10:13:00 after you dropped your iPod, what happened when you got to
10:13:06 the store?
10:13:08 A. I walked up to -- I think it is called the help bar,
10:13:13 the help desk and asked if there was anything they could do

10:13:17 to fix it, and they told me -- they quoted me a price to replace the screen or told me I could turn it in and get a discount on a new iPod.

10:13:31 Q. Did you have any other discussion with anyone at the Apple store?

10:13:37 A. Not --

10:13:38 Q. At that point?

10:13:39 A. Not that I recall.

10:13:40 Q. Did you make a decision then and there?

10:13:44 A. No.

10:13:46 Q. What happened next?

10:13:48 A. I took it home and thought about it.

10:13:53 Q. And did you eventually come to a conclusion?

10:13:57 A. Yes.

10:13:57 Q. What was your conclusion?

10:14:01 A. To buy another iPod.

10:14:03 Q. And that's when you bought the 40 gigabyte iPod?

10:14:13 A. Yes.

10:14:16 Q. During the time after you dropped the iPod and before you bought the next one, what did you do to listen to music?

10:14:26 A. CDs.

10:14:29 Q. And you played the CDs on what?

10:14:29 A. In my car. Maybe on my laptop. I don't remember.

10:14:35 Q. Your laptop at home?

10:14:37 A. Uh-huh.

10:15:54 history.
10:15:54 Q. Approximately when was that?
10:16:07 A. Maybe two or three months ago.
10:16:09 Q. Is that your best recollection?
10:16:10 A. Yes.
10:16:10 Q. What was the problem with the song?
10:16:12 A. It skipped at certain points in the song or stopped,
10:16:18 paused, skipped.
10:16:19 Q. Do you remember what song it was?
10:16:27 A. I know the artist. I don't remember the name of the
10:16:30 song.
10:16:30 Q. I'll settle for the artist, then.
10:16:32 A. Brian Adams.
10:16:34 Q. Did you get a response from Apple?
10:16:36 A. No.
10:16:41 Q. Do you remember actually reporting the problem?
10:16:43 A. I remember pushing "report a problem." I don't
10:16:49 remember if I sent it or not.
10:17:19 Q. Okay. Other than what you have told us about now, do
10:17:22 you remember any communication to or from Apple written or
10:17:25 oral, email, electronic, smoke signals, anything else?
10:17:31 A. I don't remember.
10:17:33 Q. Actually, smoke signals was probably not a good
10:17:36 comment, given what you all have been through recently.
10:17:46 Okay. You said at the time you bought the first

iPod, your plan was to put your CD collection on your iPod; is that right?

A. That is correct.

Q. How many CDs did you have at that time, approximately?

A. Approximately maybe 200.

Q. And did you, in fact, put those 200 CDs on your iPod?

A. I put a lot of them on my iPod.

Q. Approximately how many of them did you put on your iPod?

A. Most of them.

Q. How did you go about doing that?

A. I inserted the CD and pressed "import" and waited for the songs to download -- upload.

Q. You imported the CD to your laptop?

A. Correct.

Q. And then what program did you use to import?

A. I used iTunes.

Q. Where did you get iTunes?

A. It came with my iPod.

Q. So you loaded the iTunes software application onto your computer?

A. Yes.

Q. Do you know if your Dell computer had any other jukebox application?

10:21:54 after you bought your first iPod?
10:22:00 A. Can you clarify what you're trying to ask. Sorry.
10:22:03 Q. You say you bought the iPod to load your CD
10:22:05 collection, right?
10:22:06 A. Yes.
10:22:06 Q. When did you do that?
10:22:09 A. I got my iPod right around the same time that I got
10:22:12 my laptop. So right around that same time.
10:22:17 Q. And how long was it after you got your first iPod
10:22:20 that you started loading your CD collection onto your laptop
10:22:24 and then onto your iPod?
10:22:27 A. Immediately when I got iTunes, I started uploading my
10:22:31 CDs into iTunes.
10:22:34 Q. How long did it take to do that?
10:22:38 A. Weeks, long time.
10:22:43 Q. Did you do it yourself?
10:22:45 A. Yes.
10:22:46 Q. And your process was to put one CD at a time into
10:22:51 your laptop, import it into your iTunes library?
10:22:56 A. Yes.
10:22:56 Q. When that was complete, you put another CD in and you
10:22:59 go through the same process?
10:23:01 A. Yes.
10:23:01 Q. Did you make any play list at that time?
10:23:07 A. I don't remember if I did at that time.

10:23:09 Q. Have you ever made any play lists?
10:23:11 A. Yes.
10:23:12 Q. Approximately how many play lists do you have?
10:23:23 A. Approximately 15.
10:23:25 Q. Have you ever made a play list and then deleted it?
10:23:28 A. Yes.
10:23:28 Q. How many play lists all together do you think you've
10:23:32 had?
10:23:36 A. Maybe 25, 30.
10:23:42 Q. When you bought the first iPod, do you remember
10:23:46 reading any of the materials that came with it?
10:23:48 A. I remember browsing through them.
10:23:54 Q. And do you remember anything in particular that you
10:23:56 read during this browsing?
10:23:59 A. No.
10:24:01 Q. Did you learn anything from the materials you read
10:24:03 about how the iPod worked?
10:24:09 A. I learned how to maneuver through the iPod.
10:24:12 Q. Anything else?
10:24:16 A. Not that I recall.
10:24:21 Q. At the time you bought the iPod, did you know that
10:24:26 Apple had an online music store?
10:24:29 A. I don't remember if I knew that or not.
10:24:38 Q. Have you -- when you load it -- when you uploaded
10:24:43 your CDs onto your laptop into the iTunes music library, did

10:26:00 makes what format is used to import the CDs?

10:26:04 MR. CARPENTER: Objection to form. Maybe you can
10:26:08 clarify. You talking about the difference between AAC format
10:26:12 or MP3? There's in no way a foundation for that.

10:26:17 Q. BY MR. MITTELSTAEDT: Go ahead.

10:26:19 A. Can you reask the question?

10:26:21 Q. Does it make any difference to you whether you're
10:26:23 importing CDs in the AAC or the MP3 format?

10:26:31 MR. CARPENTER: Same objection to the extent that you
10:26:33 know what an AAC format is.

10:26:37 THE WITNESS: I don't know the difference between
10:26:39 them, so no.

10:26:40 Q. BY MR. MITTELSTAEDT: And for that reason do you have
10:26:42 a preference which format is used?

10:26:44 A. No.

10:26:47 Q. Do you have any information about what difference it
10:26:49 makes to use one format versus the other?

10:27:06 A. No.

10:27:06 Q. When did you first buy a song from Apple's online
10:27:11 music store?

10:27:11 A. I don't remember when that was.

10:27:13 Q. Approximately how long after buying your first iPod?

10:27:23 A. I really don't remember when I bought my first song
10:27:26 on iTunes.

10:27:27 Q. Do you remember whether it was a matter of days,

10:27:30 matter of weeks, matter of months, matter of years?
10:27:33 A. It was probably months.
10:27:35 Q. And what led you to buy -- strike that.
10:27:38 Do you remember the first song?
10:27:40 A. I do not.
10:27:41 Q. What led you to buy it?
10:27:49 A. I don't remember.
10:27:51 Q. How did you hear about the iTunes music store?
10:28:07 A. I don't remember how I heard about it.
10:28:09 Q. Can you give us any information on how you decided to
10:28:15 go to the iTunes music store when you did that for the
10:28:18 purpose of buying a song?
10:28:24 A. There was probably a fact that there was an icon for
10:28:29 it in my iTunes so I clicked on it.
10:28:31 Q. Is that your best recollection?
10:28:33 A. That is my best recollection.
10:28:34 Q. Do you remember clicking on that icon, the iTunes
10:28:37 music store icon, before actually buying your first music?
10:28:43 What I'm asking is did you buy that first song the first time
10:28:46 you clicked on that, or did you go to the music store and
10:28:50 browse and explore and then go back to it sometime later to
10:28:53 buy your first song?
10:28:54 A. I really don't remember.
10:29:00 Q. At the time you bought your first song from Apple,
10:29:02 did you know whether there were any other online music stores

10:31:36 THE WITNESS: No, no one forced me to buy anything.
10:31:42 Q. BY MR. MITTELSTAEDT: You bought your iPod voluntarily; is that correct?
10:31:45 A. Yes.
10:31:46 Q. And you bought music from the music store voluntarily; is that correct?
10:31:49 A. Yes.
10:31:53 Q. Now, when you bought the music from Apple's music store -- strike that.
10:32:02 Have you ever gone to an online website for another music store other than Apple's?
10:32:10 A. No.
10:32:13 Q. Have you ever researched whether there are any online digital music stores other than Apple's?
10:32:21 A. I have heard that there are others.
10:32:26 Q. Where did you hear that?
10:32:27 A. Advertisements.
10:32:28 Q. What other stores have you heard or seen advertisements for?
10:32:38 A. Wal-mart pops into my mind.
10:32:45 Q. Do you have any information about how Wal-Mart's store is different from Apple's?
10:32:50 A. No.
10:32:52 Q. Is there any reason in particular you haven't gone to Wal-Mart's store, online store?

10:32:58 A. Because iTunes is right there and compatible with my
10:33:01 iPod.
10:33:02 Q. And you're happy with iTunes's music store; is that
10:33:06 right?
10:33:06 A. Yes.
10:33:12 Q. When you buy music from Apple's online music store,
10:33:16 what have you done with it?
10:33:17 A. Listen to it.
10:33:22 Q. Let's take it step by step. First you download it to
10:33:26 your Dell computer; is that right?
10:33:28 A. Into my iTunes library, yes.
10:33:31 Q. Then what did you do with it once it gets into your
10:33:34 iTunes library?
10:33:40 A. I play it.
10:33:41 Q. And how do you play it?
10:33:43 A. On my iPod or through my iTunes.
10:33:46 Q. When you say through your iTunes, you mean on the
10:33:49 speakers connected to your laptop?
10:33:51 A. Yes.
10:33:51 Q. Do you ever make a copy of that music in a CD? In
10:33:56 other words, burn a CD?
10:33:57 A. Yes.
10:33:58 Q. What is -- just so we are on the same page here, what
10:34:02 does burning a CD mean?
10:34:04 A. From my understanding, it means putting files onto a

10:34:08 CD to play.
10:34:10 Q. And have you burned a CD with most of the -- most, if
10:34:14 not all, of the songs that you have bought from Apple?
10:34:19 A. No, not all.
10:34:23 Q. What percentage?
10:34:30 A. Maybe 25 percent, 30 percent.
10:34:36 Q. And are you adept at doing that?
10:34:40 A. I know how to do it, yes.
10:34:42 Q. How long does it take you to burn a CD?
10:34:46 A. Maybe ten minutes.
10:34:48 Q. Would you walk through the process that you used to
10:34:50 burn a CD with music that you've downloaded from Apple's
10:34:55 music store?
10:34:56 A. I highlighted the songs that I wanted to burn. I
10:35:01 believe I right click.
10:35:02 Q. You're in the iTunes music library on your computer,
10:35:07 right?
10:35:08 A. Yes, correct.
10:35:09 Q. And then you highlight the songs?
10:35:11 A. That I want on the CD. I believe I right click and
10:35:17 choose the option "burn to disk." Inserted a blank disk and
10:35:23 hit the "burn" button. I think it says "burn."
10:35:33 Q. How long does it take you to do that up until the
10:35:36 time that you hit the burn button?
10:35:39 A. Not long.

10:35:40 Q. A minute?
10:35:41 A. Depends on how many songs I am looking for.
10:35:43 Q. If the songs are right there, you know where they
10:35:48 are? Actually, do you sometimes put the songs into a play
10:35:51 list first?
10:35:52 A. Sometimes.
10:35:52 Q. So if you wanted to burn a CD from a play list, how
10:35:55 long does it take you up until the time you hit the "burn"
10:36:00 button?
10:36:00 A. Under a minute.
10:36:03 Q. And then from the time you hit the "burn" button
10:36:06 until the time that the process is done, that's just how fast
10:36:11 your computer is?
10:36:12 A. Correct.
10:36:13 Q. And you don't have to do anything there with the
10:36:16 computer during the time that the computer is burning?
10:36:19 A. Correct.
10:36:24 Q. Have you also heard the term "rip" or "ripping"?
10:36:28 A. I have heard the term.
10:36:30 Q. What does it mean to you?
10:36:31 A. I don't know what that means.
10:36:33 Q. Have you heard it used in the context of importing a
10:36:36 CD back into your computer?
10:36:41 A. I have heard the term, but I really don't know what
10:36:45 it means.

11:20:40 Q. And what was it that led you to go see a lawyer?
11:20:45 MR. CARPENTER: I think it also assumes facts not in
11:20:50 evidence.
11:21:02 THE WITNESS: I wanted to stop the conduct of Apple
11:21:07 and sue them for the conduct for the class.
11:21:12 Q. BY MR. MITTELSTAEDT: What conduct of Apple were you
11:21:14 concerned about that?
11:21:15 MR. CARPENTER: Objection to form. Vague and
11:21:16 ambiguous as to what point you're referring to.
11:21:18 Q. BY MR. MITTELSTAEDT: At the point you say you went
11:21:20 to look for a lawyer to file a lawsuit?
11:21:30 A. Can you repeat the question, please.
11:21:32 Q. Where did you hear about the possibility of bringing
11:21:34 a lawsuit against Apple? How did that thought first come to
11:21:41 your mind?
11:21:43 MR. CARPENTER: Objection to form. Which question
11:21:46 are you asking?
11:21:52 Q. BY MR. MITTELSTAEDT: When did you first hear about
11:21:54 the possibility of bringing a lawsuit against Apple?
11:22:05 A. I ran into Todd, and we were just discussing -- we
11:22:09 were talking -- we were just discussing how his work was
11:22:13 going and what was going on. Apple came up.
11:22:19 Q. Did he bring up Apple?
11:22:20 MR. CARPENTER: That's attorney-client privilege.
11:22:22 Q. BY MR. MITTELSTAEDT: Was he your lawyer at that

11:22:26 point?

11:22:26 A. Yes.

11:22:27 Q. When did he become your lawyer?

11:22:29 A. Early July 2006.

11:22:31 Q. What was the occasion?

11:22:33 MR. CARPENTER: Objection. Vague and ambiguous. This might tread in the attorney-client privilege as well.

11:22:38 Q. BY MR. MITTELSTAEDT: Where were you when you said that he became your lawyer, physically?

11:22:45 A. I was at my workplace.

11:22:50 Q. Which workplace?

11:22:51 A. Stingaree.

11:22:52 Q. What time of day was it?

11:22:54 A. It was in the evening.

11:22:55 Q. And Mr. Carpenter came in?

11:23:00 A. Yes.

11:23:01 Q. Have you ever seen him before?

11:23:03 A. Yes.

11:23:04 Q. When was the first time?

11:23:12 A. That I had seen him there?

11:23:14 Q. Seen him any place.

11:23:16 A. In 2002.

11:23:17 Q. And how did you meet him?

11:23:19 A. I met him at my workplace.

11:23:20 Q. Did he work at your workplace?

11:23:22 A. No.
11:23:25 Q. What workplace did you meet him at?
11:23:28 A. Moondoggies.
11:23:36 Q. How did you meet him there?
11:23:37 A. I was waiting on him.
11:23:39 Q. And how many times did you see him from 2002 until
11:23:45 early July 2006?
11:23:48 A. I don't know.
11:23:49 Q. More than a dozen?
11:23:52 A. Yes.
11:23:52 Q. More than 50?
11:24:00 A. I don't know.
11:24:00 Q. Was he your lawyer at any point during that time
11:24:08 period from 2002 until early July 2006?
11:24:12 A. No.
11:24:12 Q. How would you describe your relationship with him
11:24:15 during that period?
11:24:15 A. We dated briefly in the spring of 2002 until the
11:24:17 summer of 2002.
11:24:25 Q. And what was your relationship in July 2002?
11:24:30 A. We were friends, acquaintances.
11:24:32 Q. And how often would you see each other during that
11:24:35 time period?
11:24:36 A. Not very often.
11:24:47 Q. Did you ever see if Mr. Carpenter had an iPod?

11:24:50 A. No, I don't remember.
11:24:56 Q. And in early July 2006 when you saw him at your place
11:25:00 of business -- who brought up the issue of an iPod?
11:25:14 MR. CARPENTER: I am going to object. I think this
11:25:17 is also attorney-client privilege.
11:25:24 MR. MITTELSTAEDT: Are you instructing her not to
11:25:26 answer?
11:25:26 MR. CARPENTER: Yes.
11:25:32 Q. BY MR. MITTELSTAEDT: When you first saw
11:25:34 Mr. Carpenter in early July 2006 at your place of business,
11:25:39 did you ask him to be your lawyer before you said anything to
11:25:43 him?
11:25:44 A. Before I said anything to him?
11:25:46 Q. Well, let's do it this way: What was the first thing
11:25:50 you said to Mr. Carpenter when you saw him that evening early
11:25:55 July 2006 when the subject of Apple and iPod came up?
11:26:00 MR. CARPENTER: Well, I am going to object again and
11:26:03 insert the attorney-client privilege with respect to the
11:26:06 conversation about the iPod.
11:26:09 Q. BY MR. MITTELSTAEDT: Well, when you saw him, were
11:26:13 you waiting on him?
11:26:16 A. No.
11:26:16 Q. So did you have an appointment for him to meet you at
11:26:19 your place of business?
11:26:21 A. No.

11:26:22 Q. Did he come in to eat or drink, as far as you were concerned?
11:26:26 A. Yes.
11:26:27 Q. And did -- who spoke first?
11:26:31 A. I don't remember.
11:26:36 Q. Do you remember anything about the conversation?
11:26:42 A. Not verbatim, no.
11:26:45 Q. How long did the conversation last?
11:26:47 A. I don't know.
11:26:49 Q. Five minutes?
11:26:53 MR. CARPENTER: Don't speculate.
11:26:54 THE WITNESS: I don't know.
11:26:55 Q. BY MR. MITTELSTAEDT: Do you remember if it was more or less than five minutes?
11:26:58 A. More.
11:27:00 Q. Was it more or less than 15 minutes?
11:27:07 A. Probably around 15 minutes. I don't know.
11:27:12 Q. And was it in that conversation that you first learned that you couldn't play -- as you say at least, you couldn't play any digital music on your iPod other than what you purchased from Apple?
11:27:26 A. I don't remember.
11:27:39 Q. What do you remember about that conversation? You say you don't remember it verbatim, but what do you remember?
11:27:45 MR. CARPENTER: We are going to have to object as

11:27:47 attorney-client privilege.

11:27:48 Q. BY MR. MITTELSTAEDT: Go --

11:27:49 MR. CARPENTER: Sorry. To further my objection, I
11:27:52 think it also calls for a legal conclusion as to whether or
11:27:56 when she was actually retained. She might -- we were
11:28:02 retained. I'm sorry.

11:28:04 Q. BY MR. MITTELSTAEDT: Before that evening in early
11:28:06 July 2006, have you ever talked to Mr. Carpenter or any other
11:28:11 lawyer about Apple or the iPod?

11:28:21 A. No.

11:28:21 Q. Before you talked to Mr. Carpenter that evening,
11:28:24 early July 2006, did you have any complaint about the iPod or
11:28:29 the iTunes music store?

11:28:34 A. I don't remember.

11:28:35 Q. After you talked to Mr. Carpenter that evening, did
11:28:45 you have any complaint about the iPod or the iTunes music
11:28:48 store?

11:28:52 A. Yes.

11:28:57 Q. And what was your complaint after that point, after
11:29:00 you talked to him?

11:29:12 A. I don't know.

11:29:13 MR. CARPENTER: Again, I think we are treading close
11:29:15 to the attorney-client privilege here if it is a result of
11:29:20 our conversation.

11:29:21 Q. BY MR. MITTELSTAEDT: So am I right that before you

13:34:15 A. Yes.
13:34:15 Q. Correct?
13:34:16 A. Yes.
13:34:17 Q. Do you have any information on how long it would take
13:34:20 you to do that?
13:34:21 A. No, I don't know how long it would take.
13:34:23 MR. CARPENTER: Objection. It is assuming facts that
13:34:27 it can actually be done, also.
13:34:50 Q. BY MR. MITTELSTAEDT: As of the time that you bought
13:34:51 your second iPod in December 2006, can you tell me
13:34:55 approximately how much money you had invested in music you
13:34:58 had bought from Apple?
13:35:04 A. I don't know.
13:35:05 Q. Was it less than $25?
13:35:14 A. No.
13:35:15 Q. Okay. If you take a look at the purchase history,
13:35:27 when I add up the purchases up until the end of 2006, I come
13:35:32 up with 22.86. Would you tell me if that appears to be
13:35:41 correct?
13:35:43 MR. CARPENTER: Objection. You want her to add up
13:35:45 each song as we sit here?
13:35:47 Q. BY MR. MITTELSTAEDT: Well, let's just do it
13:35:50 together. You see the first one, the first one is 99 cents?
13:35:54 Yes?
13:35:55 A. Yes.

13:35:55 Q. Second one is 99 cents?
13:35:58 A. Yes.
13:35:59 Q. Third one is 9.99?
13:36:02 A. Yes.
13:36:03 Q. Fourth one is 9.90?
13:36:05 A. Yes.
13:36:05 Q. And the fifth one, and this one's dated May of '05,
13:36:10 is 99 cents?
13:36:12 A. Yes.
13:36:12 Q. And then you don't have any other purchases until
13:36:17 2007, correct?
13:36:19 A. Yes.
13:36:24 Q. So the total of the numbers that we have read off is
13:36:27 22.86, approximately?
13:36:31 A. Okay.
13:36:36 Q. Your complaint, if you would look at -- strike that.
13:36:48 Did you ever make any price comparison between an
13:36:51 iPod and what a competing MP3 player would cost?
13:36:58 A. In the very beginning before I purchased my first
13:37:01 one.
13:37:04 Q. And how much difference was there?
13:37:06 A. I don't remember.
13:37:07 Q. More than $50?
13:37:10 A. I don't remember.
13:37:14 Q. Did it seem like a sizable amount to you, given your

13:51:26 and listened to music?
13:51:31 A. There might be something else they needed instead.
13:51:37 Q. You know you can play music from Apple's online music
13:51:41 store without having an iPod, correct?
13:51:44 A. I never really thought about it because I have always
13:51:47 had the two together.
13:51:48 Q. But now that you think about it, you understand that
13:51:51 you can play music from iTunes's music store on a computer,
13:51:56 right?
13:51:57 A. Okay.
13:51:58 Q. I mean you know that?
13:51:59 A. Okay. Yes.
13:52:00 Q. And you also know that you can burn it to a CD and
13:52:03 play it any place you can play a CD, correct?
13:52:06 A. Yes.
13:52:06 Q. And you've known that from the start?
13:52:08 A. I have known that you can burn CDs from the iTunes
13:52:12 library, yes.
13:52:14 Q. Did you ever think there was any rule against burning
13:52:16 CDs from music you bought from Apple that was in your
13:52:22 iTunes's library?
13:52:24 A. Not that I was aware of.
13:52:32 Q. Have you ever wanted to do something with your iPod
13:52:35 and you didn't know how to do it?
13:52:39 A. Yes.

DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

I, Balinda Dunlap, hereby certify:

I am a duly qualified Certified Shorthand Reporter in the State of California, holder of Certificate Number CSR 10710 issued by the Court Reporters Board of California and which is in full force and effect. (Fed. R. Civ. P. 28(a)).

I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(b) and prior to being examined, the witness was first duly sworn by me. (Fed. R. Civ. P. 28(a), 30(f)(1)).

I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in this action. (Fed. R. Civ. P. 28).

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a true record

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of the testimony given by the witness. (Fed. R. Civ. P. 30(f)(1)).

Before completion of the deposition, review of the transcript [√] was [ ] was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed, are appended hereto. (Fed. R. Civ. P. 30(e)).

Dated: NOV 08 2007

Balinda Haven

EXHIBIT 20

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

---oOo---

STACIE SOMERS, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

No. CV 076507JW

APPLE, INC., a California corporation,

Defendants.

______________________________/

COPY

VIDEOTAPED

DEPOSITION OF STACIE SOMERS

Taken before EARLY K. LANGLEY, RMR

CSR No. 3537

June 17, 2008

Aiken Welch Court Reporters
One Kaiser Plaza, Suite 505
Oakland, California 94612
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DEPOSITION OF STACIE SOMERS

BE IT REMEMBERED, that pursuant to Notice, and on the 17th day of June 2008, commencing at the hour of 10:36 a.m., in the offices of Jones Day, 555 California Street, 26th Floor, San Francisco, California, before me, EARLY K. LANGLEY, a Certified Shorthand Reporter, personally appeared STACIE SOMERS, produced as a witness in said action, and being by me first duly sworn, was thereupon examined as a witness in said cause.

---oOo---

CRAIG L. BRISKIN, Mehri & Skalet PLLC, 1250 Connecticut Avenue NW Suite 300, Washington, DC 20036, appeared on behalf of the Plaintiffs.

PAULA ROACH, Coughlin, Stoia, Gellar, Rudman & Robbins LLP, 655 West Broadway, Suite 1900, San Diego, California 92101, appeared on behalf of the Plaintiffs.

ROBERT A. MITTELSTAEDT, MICHAEL T. SCOTT, Jones Day, 555 California Street, 26th Floor, San Francisco, California 94104, appeared on behalf of the Defendant Apple, Inc.

ALSO PRESENT: Nick Silva, Videographer, Aiken & Welch.

--oOo--

P R O C E E D I N G S

--oOo--

THE VIDEOGRAPHER: Stand by.

On the record. My name is Nick Silva. I'm a qualified video technician and a notary public for the County of Alameda, State of California. 10:36

I'm videotaping on behalf of Aiken & Welch Court Reporters at One Kaiser Plaza, 5th Floor in Oakland, California 94162. 10:36

Today's date is June 17th, 2008, and the present time is 10:36. The location of this deposition is the Jones Day Law Firm at 555 California Street, 26th floor, San Francisco, California 94104. 10:36

Today's witness is Stacie Somers in the case of Stacie Somers on behalf of herself and All Others Similarly Situated vs. Apple, Incorporated, a California corporation, Case No. CV 076507 JW, filed in the United States District Court Northern District of California San Jose Division. 10:36

This deposition was noticed by Robert A. Mittelstaedt for the defendant.

Would the counsel for the parties please 10:37

identify themselves and for whom they are appearing.

MR. BRISKIN: Craig Briskin of the firm Mehri & Skalet representing plaintiff.

MS. ROACH: Paula Roach from Coughlin Stoia, and I represent Tucker, plaintiff. 10:37

MR. MITTELSTAEDT: And Bob Mittelstaedt and Michael Scott from Jones Day for the Defendant.

THE VIDEOGRAPHER: Would the counsel please state any stipulation or statement they would like on the record at this time. 10:37

MR. MITTELSTAEDT: There are none.

THE VIDEOGRAPHER: The court reporter may now swear the witness. 10:37

STACIE SOMERS,

sworn as a witness,

testified as follows:

EXAMINATION BY MR. MITTELSTAEDT:

Q. Would you state your name and address, please? 10:37

A. Sure. Stacie Somers. And I live at 1551 Felspar Street, San Diego, California 92109.

Q. Have you been through this process before with the deposition? 10:38

Q. When did you graduate?
A. In 1997.
Q. And then what did you do?
A. And then I worked for a year on Capitol Hill for a senator and then I went to law school. 10:39
Q. At Harvard?
A. At Harvard, yes.
Q. And when did you graduate from Harvard Law School?
A. 2001. 10:39
Q. What did you do then job-wise?
A. I clerked for a judge in the Southern District of California.
Q. Who was that?
A. Marilyn Huff. 10:39
Q. And then what?
A. And then I went to work at the law firm formerly known as Milberg Weiss.
Q. In San Diego?
A. In San Diego, yes. 10:39
Q. When did you start with Milberg Weiss?
A. I started in the fall of 2002, as I recall.
Q. Did you have a summer clerk position when you were at Harvard law with any firm? 10:40

A. Yes.
Q. At what firm?
A. Heller Ehrman here in San Francisco.
Q. And that would have been the summer of 2003? No? 10:40
A. No. 2000. I'm trying to work backwards.
Q. Yeah. If you graduated in 2001 --
A. 2001. Yeah. So I believe summer of 2000.
Q. And how long did you work at Milberg Weiss? 10:40
A. Approximately a year and a half.
Q. What kind of work did you do during that period?
A. Plaintiff's class action work. I worked primarily in our consumer group doing false 10:40 advertising cases. I also worked on one anti-trust lawsuit.
Q. Which case was that?
A. I don't remember the name. It was a case about gas stations. And I believe it was in 10:41 Florida, but I don't remember. It wasn't a big case.
Q. Were you counsel of record in that case?
A. My name might have been on some pleadings. But I don't remember. 10:41

A. Yes.
Q. Why did you buy it at Target?
A. I go to Target a lot, and it was accessible.
Q. Meaning you were in the Target store? 11:03
A. Yeah.
Q. What do you mean by "accessible"?
A. Yes. That I go to Target a lot, and it was easy.
Q. How did you decide to buy that iPod? 11:04
A. I looked at the prices for the iPods and that seemed comparison-wise what I would get the most for how much I was spending.
Q. How much did you spend?
A. I don't remember now. 11:04
Q. Did you think it was a discount off what you would get if you had bought it directly from Apple?
A. No. All the prices were the same.
Q. Did Target have any MP3 players other than iPods? 11:04
A. I don't know.
Q. Did you look at any competing MP3 players?
A. No.
Q. Why did you only look at Apple iPods? 11:04

seemed like a turbulent time that -- that -- I didn't know what was going to be around later, and more people I knew had iPods and I knew where you could get the music online for -- for iPods.

Q. So, one reason you bought the iPod is you knew you could get music online from Apple's music store? 11:16

A. Yes.

Q. But your main purpose in buying the iPod at that time was to put your CD collection onto it? 11:16

A. Yes.

Q. Thinking back on it at the time, did you give some thought to whether there were competitors who made MP3 players, or were you just happy with Apple based on what you had heard from your friends and so you didn't give it any thought? 11:16

MR. BRISKIN: Objection. Misrepresents testimony. 11:16

THE WITNESS: I -- I gave it some thought in that I probably thought, oh, there are other music players. I didn't really know how music players worked. And I wasn't sure how hard or easy it was going to be. I already knew someone 11:17

who had an iPod who could help me.

So I guess I did give some thought to competitors.

BY MR. MITTELSTAEDT:

Q. So you thought at the time that there were 11:17 probably other choices you had, other competitors; right?

A. I thought --

MR. BRISKIN: Objection. Misstates prior testimony. 11:17

THE WITNESS: I thought -- can you repeat that?

BY MR. MITTELSTAEDT:

Q. Yeah. At the time you bought this -- the iPod you kept for yourself, did you believe that 11:17 there were other competitive choices if you had wanted to go with a brand other than Apple?

A. I believed that there were other music, that someone had made other music players. I didn't know who specifically. 11:18

Q. And when you were at Target, you didn't look around to see if there were other MP3 players; is that right?

A. I had already decided to purchase the iPod. 11:18

Q. Part of the reason you decided to purchase the iPod was you were -- you had heard from Heidi that it was easy to use?
A. Yes.
Q. When you bought the first iPod for Heidi, did you feel that you had been forced or coerced in any way to buy that for her? 11:18
MR. BRISKIN: Objection. To the extent it calls for a legal conclusion.
THE WITNESS: I do not believe anyone forced or coerced me to buy the iPod for Heidi. 11:18
BY MR. MITTELSTAEDT:
Q. When you bought the iPod that you kept for yourself, did you feel that you were forced or coerced in any way to buy that iPod? 11:19
MR. BRISKIN: Same objection.
THE WITNESS: I chose to purchase the iPod.
BY MR. MITTELSTAEDT:
Q. Did you feel that you were forced or coerced to do it in any way? 11:19
MR. BRISKIN: Same objection.
THE WITNESS: No.
BY MR. MITTELSTAEDT:
Q. If you had wanted to, you could have 11:19

A. Thank you. I'm not great with dates.
Q. What model did you buy her?
A. The same as mine.
Q. And how did you decide to buy that for your mother? 11:24
A. I knew what it was. I could show her how to use it. It was more memory, but it wasn't the highest-priced one.
Q. Did you have any understanding of what sources of music she was going to use? 11:24
A. My understanding was that she would upload the music from a very large CD collection that she has.
Q. Did you feel forced or coerced in any way to buy the iPod for your mother? 11:24
MR. BRISKIN: Objection to the extent it calls for a legal conclusion.
THE WITNESS: I don't -- no. I don't believe anyone forced me or coerced me to purchase it. 11:25
BY MR. MITTELSTAEDT:
Q. How do you like your iPod?
A. I like it.
Q. What do you like about it?
A. I like that I can have a large amount of 11:25

way.

Q. When -- after you bought the iPod for yourself when you downloaded your CD collection or you started to download a CD, can you describe to us how you physically did that? 11:33

A. Yes. You put the CD in the CD drive. If iTunes isn't already opened -- I can't remember if it's different on a PC, on a Mac. So this recollection is from a Mac. That brings iTunes up if it's not already opened. 11:34

Q. When you put the CD into the computer?

A. Yes. And it asks you, "Do you want to" -- I don't know exactly what the question is, basically, "Do you want to import this CD into iTunes?" And I click "yes," and then it starts 11:34 doing something.

Q. Do you find that easy to do?

A. Yes.

Q. Are you familiar with the term "ripping"?

A. Yes. 11:34

Q. And ripping describes the process that you're talking about?

A. I believe so.

Q. Can you estimate for us approximately how many times you've ripped a CD to your computer? 11:34

A. Approximately 50 times.
Q. How long does the process take?
A. It depends on the quality of the CD. There have been times when it's been a few minutes and other times when it's been half an hour. 11:35
Q. And with the half-hour ones, you're talking about how long it takes the computer to actually do it?
A. Yes.
Q. How long does it take you to do what you have to do to rip the CD? 11:35
A. Less than -- less than a minute. I'm sorry.
Q. From -- as of November of 2005, what computers were you using for music? 11:35
A. I used -- I had a Dell desktop computer and a McIntosh laptop later.
Q. When did you get the Mac laptop?
A. My recollection is that I got that in around March of 2007. 11:36
Q. Where did you buy that?
A. From Apple online.
Q. Why did you buy that?
A. I'm really interested in photography, and I've become more interested, and I've taken 11:36

Q. Okay? And now you want to burn a CD of the music on that playlist. What do you do?
A. I -- I think you -- there's something in the menu, drop-down menu somewhere that allows you to do that, is my best recollection. 11:45
Q. Do you put a blank CD in the CD drive?
A. Yes. That would be helpful.
Q. And then there's a little icon that says "burn"?
A. Could be. I don't know. 11:45
Q. How many times have you burned a CD?
A. In my life?
Q. Yes.
A. I'd say from -- from a computer?
Q. Let's start there. 11:46
A. I guess -- I don't know all these...
I would say no more than 50 times but I think that's a high guess.
Q. Would your best recollection be that you burned a CD 40 or 50 times, something in that 11:46 range?
A. I was thinking more close to 30, but I really don't know.
Q. And what would be the -- I know I've asked you this before but let's just make sure. What 11:46

Q. So if you really wanted to get a competing MP3 player rather than an iPod, at some point, it would be worth your time to burn and rip the music to a CD; right?

A. I -- 13:37

MR. BRISKIN: Objection. Compound.

BY MR. MITTELSTAEDT:

Q. At some point.

A. At some point, if I -- it would probably depend on how badly I wanted the other thing. I 13:38 mean certain variables, but I'm sure there would be a point at some point. I'm not sure when that is.

Q. So it would depend in part on whether there was a competing MP3 player that you wanted 13:38 more than an iPod. That would be one thing it would depend on?

MR. BRISKIN: Objection. Misstates prior testimony.

THE WITNESS: It would depend on a number 13:38 of things, one being what player I wanted to play on, yes.

BY MR. MITTELSTAEDT:

Q. And how much you wanted -- how much you preferred the other player over the iPod? 13:38

A. That would be one part of the equation.
Q. And another part of the equation would be how long it would to take to transfer this music; correct?
A. That would be another part of the equation, probably, yes. 13:39
Q. And what I wanted to do is just focus in on that part of the equation.
A. Okay.
Q. And if you could burn and rip all of this music that you bought from Apple in, say, 30 minutes, would you then go ahead and feel free to buy the competing MP3 player rather than an iPod? 13:39
A. I don't know.
Q. Let's say it only took 12 minutes to burn all of this. 13:39
A. I don't know, because I don't think that I can isolate the time from the other parts of what my decision would be.
Q. Is there a competing MP3 player that you would prefer over the iPod if today you could transfer this music in ten minutes? 13:39
A. I don't know.
Q. And that's because you haven't shopped around for other i- -- for competitors to iPods; 13:40

Q. Can you estimate that, you know, for every time you bought music you probably went to the site five times without buying music, something like that?

A. My estimate would be more like for every time I bought I went on once or twice. There were times I would look for podcasts more, I guess, than music necessarily. 14:02

Q. The majority of the files you downloaded from Apple were podcasts, right? 14:02

A. I think so.

Q. Do you have any of information about whether those podcasts will play on competing MP3 players?

A. I have no idea. 14:02

Q. So, another reason that if something happens to your iPod you might get a replacement iPod rather than a competing MP3 player is because of all the podcasts you have in your library; is that right?

A. I don't know. I hadn't thought about that really.

Q. But that's one of the factors you would have to take into account is the ease of transferring the podcasts? 14:03

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

I, EARLY LANGLEY, a Shorthand Reporter, State of California, do hereby certify:

That STACIE SOMERS, in the foregoing deposition named, was present and by me sworn as a witness in the above-entitled action at the time and place therein specified;

That said deposition was taken before me at said time and place, and was taken down in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true and correct report of said deposition and of the proceedings that took place;

IN WITNESS WHEREOF, I have hereunder subscribed my hand this 6th day of July 2008.

EARLY LANGLEY, CSR NO. 5793
State of California